



January 29, 2001

Ms. Margaret A. Roll
Texas Department of Human Services
P.O. Box 149030
Austin, Texas 78714-9030

OR2001-0333

Dear Ms. Roll:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 143657.

The Texas Department of Human Services (the "department") received two requests for communications made to the department, one request from a department client (the "client") and the other from an attorney (the "attorney"). You inform this office that you have released one of the pieces of correspondence to the client. You claim, however, that the remaining correspondence should be withheld from the client pursuant to section 552.101 of the Government Code, in conjunction with the informer's privilege. You assert that both pieces of correspondence should be withheld from the attorney under section 552.101 in conjunction with sections 12.003 and 21.012 of the Human Resources Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that section 552.301(b) of the Government Code provides that a governmental body must ask the attorney general for a decision as to whether requested documents must be disclosed not later than the tenth business day after the date of receiving the written request. With regard to the request from the attorney, you did not request a decision from this office within the statutory deadline. When a governmental body fails to request a decision within ten days of receiving a request for information, the information at issue is presumed public. *Hancock v. State Bd. Of Ins.*, 797 S.W.2d 379 (Tex.App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex.App.--Houston[1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982); Gov't Code § 552.302. To overcome this presumption, the governmental body must show a compelling interest to withhold the information. *See id.* Normally, a compelling interest exists where another source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 (1977) at 2.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” You assert that the requested information may not be released to the attorney based on the provisions of sections 12.003 and 21.012 of the Human Resources Code. Section 12.003 of the Human Resources Code provides:

(a) Except for purposes directly connected with the administration of the department’s assistance programs, it is an offense for a person to solicit, disclose, receive, or make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of the names of, *or any information concerning*, persons applying for or receiving assistance if the information is directly or indirectly derived from the records, papers, files, or communications of the department or acquired by employees of the department in the performance of their official duties. [Emphasis added.]

In Open Records Decision No. 584 (1991), this office concluded that “[t]he inclusion of the words ‘or any information’ juxtaposed with the prohibition on disclosure of the names of the department’s clients clearly expresses a legislative intent to encompass the broadest range of individual client information, and not merely the clients’ names and addresses.” Consequently, it is the specific information pertaining to individual clients, and not merely the clients’ identities, that is made confidential under section 12.003. *See* Hum. Res. Code § 21.012 (department shall provide safeguards restricting use or disclosure of information concerning applicants for or recipients of department’s assistance programs to purposes directly connected with administration of programs); Open Records Decision No. 166 (1977).

It appears that release here is not for purposes directly connected with the administration of DHS’s assistance programs, and therefore, the requested information is excepted from disclosure under section 12.003 of the Human Resources Code, in conjunction with section 552.101 of the Government Code. However, we note that section 552.023 of the Government Code gives a person or a person’s authorized representative a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from disclosure by laws intended to protect that person’s privacy interest. If the attorney in this case is the authorized representative of the person to whom the requested information pertains, then you must release the requested information to the attorney under section 552.023. *See* 40 T.A.C. §§ 71.4(e)(2) and 71.12(h).

We also note that the client has a right of access to the requested information relating to her under section 552.023. However, with regard to the information sought by the client, you raise the informer’s privilege. The informer’s privilege, incorporated into the Public Information Act by section 552.101, has long been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). It protects from disclosure the identities of

persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 2 (1981) (citing Wigmore, Evidence, § 2374, at 767 (McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. See Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5 (1988).

You state that the allegations in this case, if true, would constitute welfare fraud, and that the department has the responsibility to investigate such fraud. On this basis, and upon review of the submitted information, we conclude that the department may withhold the document at issue from the client in its entirety pursuant to section 552.101 and the informer's privilege.

To summarize, the department must withhold both of the submitted documents from the attorney pursuant to section 552.101 of the Government Code, in conjunction with section 12.003 of the Human Resources Code, unless the attorney is the authorized representative of the individual to whom the requested information pertains. The department may withhold the document at issue from the client pursuant to section 552.101 of the Government Code and the informer's privilege.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. Id. § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. Id. § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. Id. § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records;

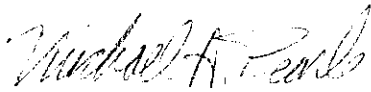
2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/seg

Ref: ID# 143657

Encl. Submitted documents

cc: Mr. John L. Mendoza
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(w/o enclosures)

bcc: (w/o enclosures)